

## ST. LOUIS REGIONAL CONVENTION AND SPORTS COMPLEX AUTHORITY

## From The Office Of State Auditor Claire McCaskill

Report No. 2003-75 July 25, 2003 www.auditor.state.mo.us



### <u>Inadequate insurance coverage and improper closed meetings noted in audit of St.</u> Louis Regional Convention and Sports Authority

This audit reviewed practices and procedures of the St. Louis Regional Convention and Sports Complex Authority (the Authority) for the three years ending December 31, 2002. The Authority was established in 1989 to finance, construct, operate and maintain a multipurpose convention and sports facility, which expanded the existing A. J. Cervantes Convention Center with a new 70,000-seat domed stadium. The stadium, named the Edward Jones Dome (the Dome), hosts conventions, trade shows, exhibitions, concerts and sporting events, including St. Louis Rams games. The project was a joint venture between Missouri, St. Louis City and St. Louis County. The state will ultimately spend \$355 million for its portion of the project through 2021.

### 50-day lapse in adequate earthquake insurance coverage for sports dome

For 50 days in the summer of 2002, the Dome was not adequately insured against earthquake damage.

The Authority owns the Dome and is responsible for its maintenance and preservation. However, the Authority has leased the Dome to the St. Louis Convention and Visitors Commission (the CVC), which is also responsible for the rest of the America's Center complex. Under the lease with the Authority, the CVC maintains and operates the Dome and is responsible for obtaining and paying for the insurance on the Dome.

During the period from July 1, 2002 to August 19, 2002, the CVC maintained only \$80 million in earthquake insurance on the America's Center (including the Dome). CVC officials said the shortfall in coverage was due to difficulty in obtaining insurance and skyrocketing prices following the events of September 11, 2001. The proximity of St. Louis to the New Madrid fault also added to the cost of earthquake insurance. CVC officials initially estimated total insurance costs at \$1.5 million for fiscal year 2003, but actual bids were approximately \$2.8 million. Due to the large increase, CVC officials initially obtained insurance closer to the original cost estimate, which did not include adequate earthquake coverage. However, effective August 20, 2002, the CVC purchased additional earthquake insurance totaling \$475 million, equal to the approximate value of the America's Center facilities and the amount needed to meet legal requirements.

Although Authority officials had discussions with CVC officials regarding insurance difficulties well before the July 2002 renewal date, additional efforts were apparently needed to resolve the difficulties before the lapse in coverage.

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In a response to the finding, the Authority asserted it had properly exercised due diligence to ensure the CVC fulfilled it responsibilities regarding the lease. When the Authority became aware the earthquake insurance was less than necessary, it made demands on the CVC to obtain additional insurance. However, the Authority stated it has taken steps to improve interaction and communications with the CVC. (See page 5)

### Some of the Authority's closed meetings did not fully comply with the Sunshine Law

Auditors found several examples of items improperly discussed in closed session meetings, such as the use of the Authority's suite at the Dome by current and former commissioners and inquiries from the St. Louis Mayor's office regarding the purpose of the Authority and its budget. Authority officials agreed that sometimes matters such as these came up in closed session, but then quickly terminated and handled later in open session. Meeting minutes did not show the length of such discussions. In addition, the meeting minutes do not specify the particular reasons for going into closed session, which is required by state law.

In a response to the finding, the Authority disagreed with the auditors' conclusions and asserted that the Authority's meetings are in full compliance with the Sunshine Law; however, it indicated it has since distributed information to commissioners detailing appropriate closed meeting subjects and will endeavor to be as specific as possible when citing statutory authority to go into closed session. (See page 8)

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STATE AUDITOR'S REPORT



Honorable Bob Holden, Governor and
Members of the Missouri General Assembly and
Members of the St. Louis Regional Convention and Sports Complex Authority
St. Louis, MO 63101

We have audited the St. Louis Regional Convention and Sports Complex Authority (the Authority). The scope of this audit included, but was not necessarily limited to, the years ended December 31, 2002, 2001, and 2000. The objectives of this audit were to:

- 1. Review expenditures made by the Authority, including those made from state funding received by the Authority.
- 2. Review compliance with applicable legal, regulatory, and contractual provisions and established policies.
- 3. Review the efficiency and the effectiveness of certain management practices and operations.

Our audit was conducted in accordance with applicable standards contained in *Government Auditing Standards*, issued by the Comptroller General of the United States, and included such procedures as we considered necessary in the circumstances. The firm of KPMG, LLP, Certified Public Accountants, had been engaged to perform financial audits of the Authority for the years ended December 31, 2001 and 2000. A similar audit for the year ended December 31, 2002, has not been completed. To minimize any duplication of effort, we reviewed the reports and substantiating working papers of the CPA firm. In conducting our audit, we reviewed minutes of meetings, written policies, financial records, and other pertinent documents and interviewed Authority personnel.

As part of our audit, we assessed the Authority's management controls to the extent we determined necessary to evaluate the specific matters described above and not to provide assurance on those controls. With respect to management controls, we obtained an understanding of the design of relevant policies and procedures and whether they have been placed in operation and we assessed control risk.

Our audit was limited to the specific matters described above and was based on selective tests and procedures considered appropriate in the circumstances. Had we performed additional procedures, other information might have come to our attention that would have been included in this report.

The accompanying History, Organization, and Statistical Information is presented for informational purposes. This information was obtained from the Authority's management and was not subjected to the procedures applied in the audit of the Authority.

The accompanying Management Advisory Report presents our findings arising from our audit of the St. Louis Regional Convention and Sports Complex Authority.

Claire McCaskill State Auditor

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January 14, 2003 (fieldwork completion date)

The following auditors participated in the preparation of this report:

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MANAGEMENT ADVISORY REPORT - STATE AUDITOR'S FINDINGS

# ST. LOUIS REGIONAL CONVENTION AND SPORTS COMPLEX AUTHORITY MANAGEMENT ADVISORY REPORT STATE AUDITOR'S FINDINGS

### 1. Insurance Coverage

The Edward Jones Dome (the Dome) was not adequately insured against damage from a destructive earthquake during a 50-day period during the summer of 2002.

The Authority owns the Dome and is responsible for its maintenance and preservation. To assist in these responsibilities, the Authority has entered into an operating lease with the St. Louis Convention and Visitors Commission (CVC) to maintain and operate the Dome. This operating lease requires the CVC to obtain and pay for insurance that adequately covers the value of the facility. Because the CVC is contractually responsible for operating the entire America's Center complex (the Dome and the adjoining convention center), it has obtained insurance packages that cover the entire complex.

The America's Center (including the Dome) was not adequately insured from July 1, 2002 to August 19, 2002. During that period, the CVC maintained only \$80 million in earthquake (seismic) insurance. In contrast, at July 1, 2002, the value of the buildings, including improvements, of the America's Center (including the Dome) totaled \$473 million. During the prior policy period (July 1, 2001 to June 30, 2002), the CVC maintained earthquake insurance for the America's Center totaling \$799.5 million. According to the CVC, this insurance coverage was the aggregate of (i) earthquake coverage which was an adjunct to and cost little more than normal property insurance, business interruption coverage for the CVC and the St. Louis Rams football team, and (ii) an extra 15 percent, which insurance companies routinely added on prior to September 11, 2001.

According to a CVC official, the shortfall in insurance coverage during this 50-day period was the result of great difficulties in getting the insurance coverage renewed. We were informed the events of September 11, 2001, the economy, and other factors had a significant impact on the insurance industry, and the CVC's insurance broker was unable to obtain comprehensive quotes on possible coverage until just a few days before the July 2002 renewal date. Once the quotes were obtained, it was discovered the number of insurance markets interested in providing insurance on high profile public facilities had shrunk and the cost of insurance had skyrocketed.

Even though the CVC had anticipated an increase in insurance costs, the increase was substantially more than anticipated. According to this CVC official, the America's Center had budgeted about \$1.5 million for insurance costs (a 37 percent increase) for fiscal year 2002, compared to \$1.1 million the previous year. However, the actual insurance bids were approximately \$2.8 million. After obtaining these bids, the CVC decided to secure basic insurance coverage at a cost approximating the budgeted amount.

The initial earthquake coverage obtained totaled \$80 million. According to that official, to increase the coverage to the maximum then available (\$425 million) would have cost another \$1.1 million and was considered cost prohibitive.

We were informed the CVC requested its insurance broker to continue to pursue excess earthquake insurance. Besides the general market forces, it appears the proximity of St. Louis to the New Madrid fault resulted in additional earthquake insurance being very costly. After determining the excess earthquake insurance could not be obtained for less, the CVC purchased insurance (totaling \$475 million), effective August 20, 2002, for \$1.2 million. Although less than the coverage maintained prior to July 1, 2002, the amount is comparable to the value of the complex's buildings and improvements and is considered sufficient by Authority officials.

Although the shortfall in earthquake insurance was eventually corrected, the Dome was not adequately protected during this 50-day period had a major earthquake occurred. Besides the financial disaster which would have resulted had an earthquake occurred, this situation represents noncompliance with various legal requirements involving the financing and leasing of the Dome.

The 1991 Financing Agreement entered into between the Authority and the sponsors of the project (the state of Missouri, the city of St. Louis, and St. Louis County) requires insurance be maintained against loss or damage by fire, lightning, earthquake, or other risks in an amount equal to the value of the facility.

The Authority has a responsibility to ensure the Dome is adequately insured at all times. Although Authority officials had discussions with CVC officials regarding insurance difficulties as early as April 2002 and were aware that a significant increase in insurance costs was anticipated, sufficient efforts should have been made to resolve the insurance difficulties prior to the lapse of coverage.

<u>WE RECOMMEND</u> the Authority work with the CVC to ensure the Edward Jones Dome is adequately insured at all times.

### **AUDITEE'S RESPONSE**

Contrary to the position asserted by the State Auditor, the Authority has met its responsibilities regarding insurance coverage for the Dome. Additionally, the Authority believes that the heading should be "Sufficiency of Earthquake Insurance Coverage" as all other required insurance coverages were in place on July 1, 2002, including \$80 million of earthquake coverage.

Pursuant to the terms of the Operating Lease between the Authority and CVC, CVC is responsible for obtaining all insurance coverage for the Dome required by the various financing agreements relating to the Dome. Insurance coverage for the Dome was renewed annually by CVC effective each July 1. In anticipation of the changes in the insurance market after September 11, 2001, the Authority, through its Executive Director commenced communications with senior management of CVC in March 2002, inquiring as to the status of the insurance

renewal, any issues anticipated by CVC and whether CVC had sufficient monies to pay for the required coverages. These communications from the Authority to CVC were both oral and written and continued monthly at regular Authority and CVC management meetings. Copies of the written communications were provided to the representatives of the State Auditor's office during the course of the state audit, and the Executive Director also provided notes of meetings and telephone communications with CVC on these matters. The Executive Director reported to the representative that CVC informed the Authority that no further assistance from the Authority was needed and that CVC was handling the matter.

In addition, the Executive Director attended many public meetings of the CVC, including the June 2002 Annual Meeting, and no mention was ever made of an insurance problem. As that date approached, the Authority requested a copy of the insurance certificate evidencing procurement of the required coverages. CVC assured the Authority that the insurance was in place and that the Authority would receive a copy of the insurance certificate after July 1, 2002. The Authority's Executive Director made several requests for the certificate and each time was told it would be delivered to the Authority. It should be noted that, because of the heavy volume of insurance business with July 1 renewals, it is not at all unusual for insurance certificates and binders to be delayed after the insurance is placed in effect. This was doubly true in June and July 2002, post 9/11, when property and reinsurance markets were in turmoil. It was therefore not unexpected or alarming that the actual insurance certificates were delayed. Only on August 18, 2002, did the Authority become aware that the earthquake coverage that had been obtained on July 1 was substantially less than the previous year and did not meet the necessary coverage amount. At that time the Authority made demands on CVC to obtain additional earthquake coverage and CVC had the additional insurance coverage in place the next day. The Authority believes it was diligent in working with CVC to make certain that adequate insurance was obtained in a timely fashion. Had CVC communicated the problem, the Authority had the backup financial resources in place to obtain the additional and necessary coverage and would have done so on July 1.

The Authority has taken steps to improve interaction and communications with CVC and in 2003 has participated with CVC in intensive evaluations and reassessment of insurance requirements for America's Center and the Edward Jones Dome, employing outside design consultants to evaluate the replacement and total insurable values for the facilities. Insurance consultants assisted in evaluation of all base and excess coverages and for insurance quoted, purchased and in place by July 1 as required by the Project Financing Agreement, the Operating Lease and the other financing and lease documents. The Authority has obtained evidence of adequate insurance coverage for the year commencing July 1, 2003.

The Authority asserts that it has properly and adequately exercised its due diligence to insure that CVC fulfilled its responsibilities under the Project Financing Agreement, the Operating Lease and other financing and lease documents. The Authority was entitled to rely on assurances that policies had been secured with appropriate coverage, and when a discrepancy was identified, the Authority took immediate steps to insure the appropriate excess level of coverage was placed.

### Closed Meetings

2.

The Authority's handling of closed meetings was not in full compliance with the Sunshine Law.

The Authority's commissioners generally conduct their meetings on a quarterly basis. These meetings usually include a closed, or executive, session as allowed by state law. During our review of the handling and minutes of the closed meetings, we noted the following concerns:

A. Some items were discussed in closed session that are not allowed by law. Section 610.021, RSMo Cumulative Supp. 2002, allows matters to be discussed in closed session only if they relate to certain specified subjects. Those subjects that would appear to be most applicable to the Authority include matters related to pending or possible litigation, real estate transactions, and personnel actions involving employees.

Some examples of matters that were improperly discussed in closed session include:

- The design of a plaza adjacent to the Dome.
- Inquiries from the city of St. Louis Mayor's Office regarding the purpose of the Authority and its budget.
- The annual renewal of the agreement with the Authority's contracted lobbyist.
- The usage of the Authority's suite at the Dome by current and former commissioners.

Authority officials agreed that sometimes matters such as those mentioned above were brought up in closed session; however, the discussions were quickly terminated and handled later in the open session. The length and circumstances of the discussion of these matters in closed session were not clear based on a review of the minutes.

To ensure compliance with the state law, care should be taken to ensure only matters specifically authorized by law are discussed in closed session.

B. At the end of each quarterly meeting, the Authority's commissioners generally vote to go into closed session at the beginning of the next quarterly meeting. This results in the commissioners beginning their next meeting (approximately three months later) in closed session.

The governing bodies of governmental entities in Missouri generally vote to go into closed session either immediately or shortly before the closed meeting is held. The Authority's current practice is unusual, and it is feasible a commissioner could vote to go into closed session at the beginning of the next

quarterly meeting and be replaced prior to that next meeting. This would result in a different individual participating in a closed meeting that they had not voted to close.

If the commissioners wish to hold the closed portion of their quarterly meetings near the beginning of those meetings, they should consider starting their meetings in open session and then voting to go into closed session.

C. The minutes of the Authority's regular meetings do not specify the particular reason(s) for going into closed session. Instead, whenever the commissioners go into closed session, the same statement is routinely documented in the minutes. The statement documented indicates the meetings are to be closed "to discuss personnel issues as well as any confidential and/or privileged communications between the Authority members, its representatives, and its attorneys, to discuss litigation or action for litigation, property acquisition and all other matters pursuant to Section 610.021 RSMo, or any other sections of Missouri Statutes relative to executive sessions of public bodies."

Section 610.022, RSMo 2000, requires the specific reason(s) for closing a meeting to be announced publicly at an open meeting and entered into the minutes. A statement which includes all the possible matters which might be discussed in closed session appears to miss the intent of the law.

### **WE RECOMMEND** the Authority:

- A. Ensure only matters specifically authorized by law are discussed in closed session.
- B. Revise the current practice regarding the timing of the vote authorizing the commissioners to go into closed session.
- C. Ensure the specific reason(s) for going into closed session is announced publicly and documented in the regular meeting minutes.

#### AUDITEE'S RESPONSE

The Authority's handling of closed meetings was in full compliance with Missouri's Sunshine Law. The Auditor could provide no statutory authority, case law or Missouri Attorney General opinions supporting the Auditor's interpretation of the statute. The Auditor's representative admitted that various legal counsel supported other interpretations of the Sunshine Law consistent with the actions of the Authority. The Authority also notes that compliance with the Sunshine Law is outside the scope of the State Auditor's authority in conducting the audit. The following points should be made regarding this finding.

A. The Auditor cites examples of some matters that were mentioned in closed session that were allegedly improper subjects of discussion. The Authority's Executive Director recorded the minutes and she noted that the matters cited in the example had been raised.

She also told the Auditor's representative that on each and every occasion either she or the Authority's General Counsel had immediately noted that the matter raised could only be discussed in open session and that there was no further discussion of the matter in closed session. The Executive Director offered to make a sworn affidavit of those facts, and the Authority's General Counsel assured the Auditor's representative that the Executive Director's statements were accurate. The minutes do not reflect any actual discussion of the matter, only that the matter was raised.

With respect to the specific examples, the Authority makes the following comments. The first example regarding the design of the plaza was a question about the cost of what CVC wanted to do with the plaza. The second and fourth points were questions about potential litigation matters involving the Authority. The third example relating to the Authority's lobbyist had been reviewed with the State Auditor in a prior audit, and the Auditor had agreed it could be treated as a personnel matter that could be discussed in closed session. Despite this approval, the matter in question was actually handled in open session.

To ensure compliance with the Sunshine Law and to avoid inappropriate questions raising matters in closed session, the Authority has distributed, to each Commissioner, information on what subjects are appropriate for discussion in closed meetings and will continue to distribute such information on a regular basis.

B. The report suggests that it is inappropriate for Commissioners to vote to go into a closed session in advance of the closed meeting. There is no authority in the statute or any Attorney General's opinion suggesting that such procedures would be improper. In fact, the Authority took this action to give as much notice as possible to the public of a closed session. The Authority did not want to start an open meeting and suddenly and without advance notice surprise the public by going into closed session, causing the public inconvenience in leaving the meeting and waiting outside for what could be a significant period of time before being allowed to re-enter the meeting.

The Auditor also seems to question whether it would be proper for a Commissioner to vote to close a future meeting and be replaced prior to that future meeting resulting in a new Commissioner participating in the closed meeting. The Auditor cites no authority that such action would be improper. The issue is whether the vote to close the meeting was proper at the time the vote was taken. If the vote was proper, then so long as the matter voted on was the subject discussed at the closed meeting, then everything is proper, in order and in compliance with the Sunshine Law

Without admitting that any of its actions were improper, the Authority has already changed its procedures so as to hold closed meetings at the end of open sessions and to take the vote to do so during the then open session. This does not provide as much advance notice to the general public as the Authority's prior procedures (which had been previously reviewed by the State Auditor in a prior audit and not commented on), but will not cause the inconvenience to the general public of going into closed session several times during the course of an open meeting causing great inconvenience to those who must leave the meeting.

C. The Auditor's report states that the resolution voted on by the Commissioners is not specific enough. Interpretations of the Sunshine Law by the Missouri Attorney General state that recitation of the statutory reasons is sufficient and no further specificity is required or even appropriate as it could reveal matters that should not be revealed. Again, this procedure had been reviewed in prior audits without comment.

Without admitting any improper action or non-compliance with the Sunshine Law, the Authority will endeavor to be as specific as possible when citing statutory authority to go into closed session.

### **AUDITOR'S COMMENT**

Despite the Authority's assertion to the contrary, reviewing compliance with applicable state laws (including the Sunshine Law) is within the scope of audits of government entities. In addition to routinely reviewing compliance with the Sunshine Law on individual agency/entity audits, in recent years the Missouri State Auditor's office has conducted three audits of agency/entity compliance with the Sunshine Law. The findings presented in this audit are similar to observations made and conclusions reached in other audits.

HISTORY, ORGANIZATION, AND STATISTICAL INFORMATION

## ST. LOUIS REGIONAL CONVENTION AND SPORTS COMPLEX AUTHORITY HISTORY, ORGANIZATION, AND STATISTICAL INFORMATION

The St. Louis Regional Convention and Sports Complex Authority (the Authority) was established in 1989 (with commissioners appointed in 1990) pursuant to Section 67.650, RSMo, to finance, construct, operate, and maintain a multi-purpose convention and sports facility. This facility represented an eastern expansion of the existing A. J. Cervantes Convention Center and included a 70,000 seat domed stadium. This project was intended to complement the existing convention center.

The project was a joint venture between the state of Missouri, the city of St. Louis, and St. Louis County (the Sponsors), with the Authority being responsible for the construction of the facility as well as its subsequent maintenance and operation. In 1991, a financing agreement was entered into whereby each of the Sponsors agreed to contribute funds annually to the Authority, subject to appropriation, to fund principal and interest payments on bonds issued to finance the cost of the project. In addition, beginning in 1994, the Sponsors agreed to contribute additional funds to the Authority's Preservation Fund to be used to pay future costs of maintaining the project facility.

Based on the financing agreement, the state will ultimately spend \$355 million for its portion of the debt service requirements and preservation payments through the year 2021. During the three years ended December 2002, the state contributed \$12 million annually, \$10 million for the payment of debt service and \$2 million for preservation purposes. During that same period, the city of St. Louis and St. Louis County each contributed \$6 million annually, \$5 million for debt service and \$1 million for preservation purposes.

The project was originally financed by bonds issued by the Authority in August 1991. The bonds were sponsored by the state of Missouri, the city of St. Louis, and St. Louis County for \$132.9 million, \$65.7 million, and \$60.1 million, respectively. Because of favorable market conditions, the bonds sponsored by the state of Missouri and St. Louis County were refinanced in 1993, and the bonds sponsored by the city of St. Louis were refinanced in 1997. The Authority made its first debt service payment on the bonds in February 1992, with the last debt service payment scheduled to be due in August 2021.

The Authority completed the construction of the project in November 1995 for approximately \$298 million. These costs included design fees; construction management fees; land acquisition; utility relocations; demolition; site preparation; professional accounting and legal fees; administrative costs; and construction costs. In 1999, the Authority completed \$6.7 million in improvements for signage, graphics, and fan accommodations.

The project, named the Edward Jones Dome (the Dome), is a multi-purpose facility used for conventions, trade shows, exhibitions, concerts and a variety of sports events, including home games of the National Football League's St. Louis Rams football team. Besides its use as a sports stadium, it has 180,000 square feet of column-free space available for conventions, trade shows, and exhibitions. This space is on a contiguous level with the adjoining convention center. The Dome is considered part of the America's Center, a convention center and sports complex which also includes the previously existing A. J. Cervantes Convention Center and a southern expansion of that facility.

In 1991, the Authority entered into an agreement to lease operations of the project facility (the Dome) to the St. Louis Convention and Visitors Commission (CVC) upon project completion. Since completion, the Dome has been marketed and operated by the CVC pursuant to this lease agreement. The CVC has a sublease with the St. Louis Rams football team which allows the team to use and operate the facility for its home football games.

The CVC markets the city of St. Louis and St. Louis County as a convention and meeting site and as a leisure travel destination. In 1991, the CVC's board was reorganized to reflect the organization's new role in managing the expanded America's Center convention complex. The CVC is funded primarily by a 3.75 percent tax on hotel sleeping rooms in the city and county. The CVC works to bring citywide conventions, meetings, group tours, and individual leisure travel to the area. In addition, the CVC also books sporting and special events in the Dome.

The Authority is bipartisan and consists of up to eleven commissioners who shall be qualified voters of the state of Missouri and residents of either the city or the county. Up to five commissioners, one of whom shall be the chairman, are appointed by the Governor with the advice and consent of the Senate. Up to three commissioners are appointed by the Mayor of St. Louis with the advice and consent of the Board of Aldermen. In addition, up to three commissioners are appointed by the County Executive of St. Louis County with the advice and consent of the County Council. The commissioners serve staggered terms of six years and hold office until successors have been appointed and qualified. The commissioners serve without compensation. At December 31, 2002, the commissioners were:

Commissioner	Title	Term Expires
J. Kent Underwood Larry L. Deskins Michael F. Shanahan, Jr. Ora Lee Malone James H. Buford Gretchen Myers Michael A. Garvin Gerald T. Feldhaus Jay Dearing	Chairman Vice-Chairman Secretary/Treasurer Member	May 31, 2002* May 31, 2004 May 31, 2006 May 31, 2004 May 31, 2002* May 31, 2002* May 31, 2004 May 31, 2004 May 31, 2006
Harriett F. Woods	Member	May 31, 2008

<sup>\*</sup> Term expired. Commissioner continuing to serve until replaced.

During 2002, the Authority employed three individuals assigned to various administrative and support functions. Renee A. Kleffner served as Executive Director until she resigned in December 2002. She was replaced by J. Kent Underwood, who resigned from the board and accepted the position effective January 24, 2003.

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